

Small Business Economic Impact Statement  
Proposed Revision of  
WAC 246-215, Food Service

**1. Briefly describe the proposed rule.**

The State Board of Health's Food Service Rules, Chapter 246-215 WAC, are applicable to many different kinds of establishments that provide food to the public. They apply whether there is a direct charge for the food or not. The last major revision of these rules was adopted by the State Board of Health in 1992. In November 2001, the Board agreed to a request from the Department of Health (DOH) to initiate another major revision to update the state rules. The Board gave direction to DOH to base the rule revision on standards in the most current edition of the U.S. Food and Drug Administration's (FDA) model Food Code. In 2003, a new statute (RCW 43.20.145) gave additional direction that a revision to the food service rules must consider the provisions of the FDA Food Code.

The FDA Food Code serves as the basis for food service rules in 42 states. An additional six states, plus Washington, are in the process of adopting the provisions of this model code into their food service rules. The Food Code was developed with extensive input from members of the food service industry, the scientific community, and food safety regulators throughout the U.S. It is updated periodically based on new recommendations of a national committee, the Conference for Food Protection. The Food Code incorporates the latest knowledge of food science and technology. Providing a reference to the FDA 2001 Food Code will allow efficient updating of the state rules based on the latest scientific knowledge to protect public health and safety. In its annexes, it provides justification for specific provisions. Most members of the food service industry support the Food Code because it helps provide consistent national food service rules.

The DOH formed advisory workgroups to develop recommendations on whether to modify parts of the FDA Food Code before adopting it as the base for the rule revision. The recommendations in this rule revision proposal incorporate input obtained from stakeholders over a period of more than two years. The proposal also includes recommendations to retain some provisions from the current state food service rules that are not contained in the model Food Code. The general goal is to maintain the protections provided to consumers in the current state rule and to build upon them. Some provisions in the Food Code might appear to be less protective of public health but are justified by the latest food safety research.

Another purpose of this proposed rule revision is to comply with the mandate of RCW 69.80.060 (adopted in 2002) that the State Board of Health "promulgate rules for the safe receipt, preparation, and handling by distributing organizations of food accepted from donors." This law says regulations should apply to distributing organizations (as defined by RCW 69.80.020) that give food to the needy. Additionally, RCW 69.80.50 indicates that special consideration should be given to donors and distributing organizations for

physical facility, equipment, and food source requirements when no known or expected health hazard would result. Therefore, this rule revision proposal provides some exemptions from requirements to distributing organizations that otherwise apply to food establishments. However, neither the law nor the proposed rule says that distributing organizations should be exempted from all the rules.

## **2. Is a Small Business Economic Impact Statement (SBEIS) required for this rule?**

Yes, portions of this rule require an SBEIS. However, DOH has determined that no SBEIS is required for portions of the rule that (1) are not significantly different from provisions in either the 2001 FDA Food Code or existing Chapter 246-215 WAC; (2) merely provide clarification of other existing state laws or rules; or (3) do not increase the regulatory cost.

## **3. Which industries are affected by this rule?**

Food service rules have the potential to affect many industries, e.g., any business with a company cafeteria. For most industries, however, costs are unlikely to exceed the minor impact threshold. Consequently, this analysis focuses on industries that are more likely to incur more than minor costs as a result of the rule. These include:

SIC Code/ Description	Average employment, small businesses	Average employment, largest 10%
5411: Grocery stores	8.4	74.0
5421: Meat and fish markets	4.5	15.5
5431: Fruit and vegetable markets	4.2	30.3
5441: Candy, nut, and confectionary stores	4.5	13.0
5451: Dairy product stores	1.7	1.7
5461: Retail bakeries	8.4	30.5
5499: Miscellaneous food stores	6.9	30.7
5812: Eating and drinking places	11.2	160.7
5813: Drinking places (alcoholic beverages)	6.1	38.0
5961: Catalog and mail-order houses	4.5	140.8
5963: Direct selling establishments	3.3	25.0
7011: Hotels and motels	9.0	57.2
7021: Rooming and boarding houses	5.1	14.3
7032: Sporting and recreational camps	4.0	13.6
7832: Motion picture theaters, except drive-in	14.8	85.4

7933: Bowling centers	16.9	166.8
7941: Professional sports clubs and promoters	4.1	26.7
7948: Racing, including track operation	2.3	12.0
7996: Amusement parks	8.8	15.0
7999: Amusement and recreation services, not elsewhere classified	5.9	223.5
8062: General medical and surgical hospitals	11.1	2027.7
8063: Psychiatric hospitals	na.	147.3
8069: Specialty hospitals, except psychiatric	15.4	167.7
8082: Home health care services	14.2	162.6
8211: Elementary and secondary schools	19.1	1472.4
8221: Colleges, universities, and professional schools	7.2	3454.0
8222: Junior colleges and technical institutes	3.9	1726.0
8299: Schools and educational services, not elsewhere classified	5.2	39.0
8322: Individual and family social services	31.0	180.8
8351: Child day care services	8.2	31.5
8361: Residential care	8.0	97.4
8399: Social services, not elsewhere classified	5.3	36.1
8641: Civic, social, and fraternal associations	6.2	66.3
8661: Religious organizations	5.3	27.1
8699: Membership organizations, not elsewhere classified	6.3	34.2

**4. What are the costs of complying with this rule for small businesses (those with 50 or fewer employees) and for the largest 10% of businesses affected?**

Many components of the proposed rule either reduce costs for affected businesses or impose no costs on affected businesses. We address the remaining components below.

***1. WAC 246-215-051(9): Consumer advisory for unpasteurized juices of fruits and vegetables.***

**Description:** Food Code section 3-603.11 requires facilities serving raw or undercooked animal products to inform consumers by brochures, menu advisories, or other effective

written means of the significantly increased risk associated with certain especially vulnerable consumers eating such foods. This proposed rule change requires similar consumer advisories for unpasteurized juices of fruits and vegetables.

**Analysis:** DOH believes that the cost associated with the proposed rule change is below the minor impact threshold. The existing rule (WAC 246-215-040(10)) requires facilities serving unpasteurized juice to inform consumers that the juice is unpasteurized. The proposed rule therefore only requires facilities to add additional information, namely, that there is a significantly increased risk associated with certain especially vulnerable consumers eating such foods. Since facilities are already required to inform consumers if they are serving unpasteurized juices, adding a consumer advisory notice is unlikely to increase costs unless there are “menu costs” (e.g., the costs associated with the printing of new menus) or other fixed costs. In such cases, however, the food code does provide alternatives to reprinting menus (e.g., the use of placards or other written notices), so the actual cost to facilities is likely to be small.

There are also potential costs resulting from lost sales if customers are turned away by the consumer advisory notice; however, these costs are difficult to quantify and impossible to avoid if consumers are to be informed of potential health concerns.

## ***2. WAC 246-215-121(11)(e): Mobile unit minimum water tank size for handwashing.***

**Description:** Add a requirement that mobile units have a water supply tank with a minimum capacity of 5 gallons for handwashing.

**Analysis:** Existing WAC 160(9)(b) requires the capacity of the water supply system to be “sufficient to furnish enough hot and cold water” for the tasks performed on the unit. The new, more specific, provision of a minimum 5-gallon tank for handwashing, could be a significant burden to operators of mobile units who might need to replace built-in water supply tanks on the units. However, a portable 5-gallon container could be used to hold water for handwashing. Such a container could be obtained for less than \$25.

## ***3. WAC 246-215-131(8)(c): Temporary establishment minimum water tank for handwashing.***

**Description:** Add a requirement that temporary food establishments have a container to hold water for handwashing with a minimum capacity of 5 gallons. The container also is required to be insulated to hold the water warm for handwashing.

**Analysis:** Existing WAC 190(6)(a) requires temporary food establishment operators to have approved handwash facilities with clean, warm, running water. However, neither the existing WAC nor the Food Code has a requirement for the minimum size of the handwash water storage container in a temporary food establishment. The new, more specific, provision for the water storage container could be a significant burden to

operators. However, the cost to each temporary food establishment operator is estimated to be no more than \$25 for an insulated 5-gallon container with a spigot, such as a plastic cooler chest.

**4. WAC 246-215-151(11):** *Maintaining receiving records at donated food distributing organizations.*

**Description:** Add a requirement that donated food distributing organizations keep records for 30 days of all non-commercially packaged or potentially hazardous foods received, documenting the source, quantity, type, and receiving date of the foods.

**Analysis:** Neither the existing WAC nor the Food Code has a provision requiring food establishments to maintain such receiving records for 30 days. Most establishments keep invoices or other records of food purchases for at least 30 days for business accounting purposes. Charitable organizations receiving donated food inconsistently maintain records of donated foods received. This new provision could be a burden to donated food distributing organizations.

The costs of the proposed rule come from the record-keeping requirement. Material costs would be minimal. The receiving log could be kept in various forms, including on a spiral-bound notebook or in a computer log. The time to mark the record is the main cost. However, this is minimized by the limitation on the types of foods for which a record must be kept. Also, discussions with affected organizations show that many of them will not be affected by this requirement, either because they do not accept the foods in question or because they already keep records that fulfill the requirements of the proposed rule. Those organizations that are affected by the proposed rule are likely to have costs proportional to their size. Estimating these costs is difficult because of the varying structures of these organizations and because much of the work is volunteer, rather than paid employment.

**5. Does the rule impose a disproportionate impact on small businesses?**

The consumer advisory requirement for unpasteurized juices falls below the minor impact threshold. The two provisions requiring specified containers for handwashing water are likely to impose a disproportionate impact on small businesses because they are more likely to be affected by the new rule than larger businesses. (Given that existing rules require “sufficient” amounts of water, for example, larger businesses are likely to already have a handwashing capacity in excess of 5 gallons.) The record-keeping rule is unlikely to impose a disproportionate impact on small businesses when costs are measured per employee (which in this case includes volunteers); such record-keeping costs are likely to have a proportionate impact on businesses of different sizes.

**6. If the rule imposes a disproportionate impact on small businesses, what efforts were taken to reduce that impact (or why is it not “legal and feasible” to do so) by**

**a) reducing, modifying, or eliminating substantive regulatory requirements?**

Early drafts of the rule revision proposal contained a provision requiring that mobile food units conducting warewashing on-board have a supply water tank with a minimum capacity of 35 gallons. This would be a more prescriptive requirement than specified in existing WAC 246-215-160(9). The proposal came out of stakeholder committee meetings. However, DOH feels that there would likely be a significant cost to some mobile operators to retrofit their units if they wanted to expand operations to a local jurisdiction where not currently licensed. This cost would be particularly burdensome for small business operators. DOH considers that an insignificant increase in public health protection would be provided by a prescriptive requirement regarding water supply for warewashing. Therefore, DOH is proposing the alternative of keeping a performance standard for water supply tank capacity pertaining to washing and sanitizing of utensils. The proposal specifies that the water system be refilled as necessary to furnish enough hot and cold water for specified tasks.

**b) simplifying, reducing, or eliminating record keeping and reporting requirements?**

Reducing record-keeping requirements below those in the proposed rule are not feasible because of the special public health concerns associated with non-commercially packaged or potentially hazardous foods. (An example of a non-commercially packaged, ready-to-eat food would be a salad that was brought into a food bank; a potentially hazardous food is anything requiring refrigeration.) The reason the proposed rule is important is that it will help public health officials trace back food involved in an illness outbreak. This information could help identify the source of a food safety hazard or error in preparation and enable health officials to direct interventions to prevent additional illnesses. The information can be used to learn food safety lessons for educational purposes and future rule changes. Also, in these days of terrorist and food tampering concerns, having a record of the source of easily contaminated foods could serve as a deterrent to intentional contamination.

**c) reducing the frequency of inspections?**

The proposal would allow the regulatory authority (local health agencies) to exempt donated food distributing organizations from the requirement to obtain a permit. This proposal also would exempt such operations from many physical facility and equipment standards in the Food Code.

**d) delaying compliance timetables?**

Not relevant.

**e) reducing or modifying fine schedules for noncompliance?**

Not relevant.

**f) any other mitigation techniques?**

As noted above, DOH is proposing that the regulatory authority (local health agencies) have the option of exempting donated food distributing organizations from the requirement to obtain a permit. The proposal also exempts them from many physical facility and equipment standards in the Food Code.

**7. How are small businesses involved in the development of this rule?**

Small businesses were represented in our rule revision subcommittees, including donated food distributing organizations, but not on the Core Workgroup. We also received comments on Draft #1 and Draft #2 from small businesses, including mobile operators, temporary establishment operators, and donated food distributing organizations.